

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK,ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

HARRY DANIELS, THOMAS P. FLAHERTY, Jr., PAUL LUCIANO, RYAN J.
McGOVERN, PAUL J. LYONS, Jr. and STEPHEN J. FLYNN

Appellants

v.

Docket Nos.: (See Below)

HUMAN RESOURCES DIVISION & BOSTON FIRE DEPARTMENT,

Respondents

CSC Case No.

Appellant

B2-12-310

Harry Daniels

B2-12-319

Thomas P. Flaherty, Jr.

B2-12-320

Paul S. Luciano

B2-12-321

Ryan J. McGovern

B2-12-322

Paul J. Lyons, Jr.

B2-12-323

Stephen J. Flynn

Appearance for Appellants:

Frank J. McGee
1952 Ocean Street
Marshfield, MA 02050-3424

Appearance for Boston Fire Department:

Robert J. Boyle, Esq.
City of Boston
Office of Labor Relations
Boston City Hall: Room 624
Boston, MA 02201

Appearance for Human Resources Division:

Tsuyoshi Fukuda, Esq.
Human Resources Division
One Ashburton Place: Room 211
Boston, MA 02108

Commissioner:

Christopher C. Bowman

DECISION ON JOINT REQUEST FOR RELIEF FILED BY APPELLANTS AND
BOSTON FIRE DEPARTMENT

Procedural History

On November 15, 2012 and November 28, 2012, the Appellants filed appeals with the Civil Service Commission (Commission), contesting the decision of the state's Human Resources Division (HRD) to not allow them to sit for the Fire Captain promotional examination that was held on November 17, 2012.

A pre-hearing conference was held on December 4, 2012 at which time I joined the Boston Fire Department (BFD) as a party. I then issued a Procedural Order which included orders to HRD and BFD to produce various documents. All parties were required to attend a status conference, which was held on December 18, 2012.

Overview

At issue is whether or not the Appellants met the requirements of G.L. c. 31, § 59 to sit for the Fire Captain promotional examination held on November 17, 2012.

As articulated by the Appeals Court in Weinburgh v. Civil Serv. Comm'n & Haverhill, 72 Mass. App. Ct. 535, 538 (2008) and by the Commission in Dickinson and Hallisey v. Human Resources Division, 24 MCSR 200 (2011), there is a two-prong test to determine whether the Appellants were eligible to sit for this promotional examination:

1. Were the Appellants in the next lower title of Fire Lieutenant at the time of the November 17, 2012 Fire Captain examination?;
2. Had the Appellants served *in the force* for one (1) year after their names had been certified for Fire Lieutenant at the time of the November 17, 2012 Fire Captain examination?

In regard to Question 1, it is undisputed that all of the Appellants were in the next lower title of Fire Lieutenant at the time of the November 17, 2012 Fire Captain examination.

In regard to Question 2, there was confusion between HRD and BFD in regard to when the Appellants' names had been certified for the next lower title of Fire Lieutenant. For the Appellants to be eligible to sit for the November 17, 2012 Fire Captain Examination, their names must have been "certified" for the lower title of Fire Lieutenant on or before November 17, 2011, one (1) year prior to the date of the Fire Captain examination.

The genesis of the confusion is HRD's decision, in October 2009, to delegate the responsibility of creating certifications (for *promotional* appointments) to the approximately two hundred (200) civil service communities in Massachusetts. Prior to October 2009, HRD created the certifications upon request of the communities, thus ensuring a uniform and verifiable method for determining when an individual's name appeared on a

certification for a given position. As referenced in Hallisey and Dickinson at page 22, there has been no uniform application of the rules related to the creation of certifications since HRD delegated this function in 2009. That is precisely what precipitated the confusion regarding the instant appeals and that will continue to vex the civil service community until HRD has the resources to once again assume this consequential responsibility.

In the interim, the onus will fall on the Commission to review each of these appeals on a case-by-case basis, examine the documents and practices of each community and then determine whether the two-prong test referenced above has been met.

Here, after reviewing all of the relevant documents and the statements of BFD representatives related to the process for making promotional appointments, I am sufficiently convinced that the Appellants met the second-prong of the two part test. Thus, they were eligible to sit for the Fire Captain promotional examination on November 17, 2012.

Conclusion

For all of the reasons cited above, the joint request of the Appellants and BFD, which is not opposed by HRD, is hereby *allowed*.

Pursuant to the Commission's authority under Chapter 310 of the Acts of 1993, the Appellants shall be eligible to sit for a make-up examination for Fire Captain, which shall be administered by HRD forthwith.¹

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, Stein and McDowell, Commissioners) on January 10, 2013.

A True Record. Attest:

Commissioner

¹In issuing this order, I am mindful of concerns that individuals allowed to sit for make-up examinations may have an advantage over those who sat for the initial examination. That would occur if any of the questions on the initial examination are repeated on the make-up examination and those taking the make-up examination become aware of the questions from that initial examination. Should there be any evidence that the Appellants here become aware of questions from the initial examination, the Commission will move swiftly to invalidate their make-up examinations.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision as stated below.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days from the effective date specified in this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:

Frank McGee, Esq. (for Appellants)

Robert Boyle, Esq. (for Respondents)

Tsuyoshi Fukuda, Esq. (for HRD)